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CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
LOS ANGELES REGION

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13 *Regional Water Quality Control Board*

14 BEFORE THE  
15 ENVIRONMENTAL PROTECTION AGENCY  
16 REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION

17 In the matter of:

18 SHEA HOMES, a limited partnership,  
19 Respondent.  
20

CASE NO. R4-2004-0066

21 **SETTLEMENT AGREEMENT AND  
22 MUTUAL RELEASE; ORDER**

23 THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this "Agreement") is  
24 made and entered into by permittee Shea Homes, a limited partnership ("Shea Homes") and the  
25 Prosecution Team for the Los Angeles Regional Water Quality Control Board (collectively the  
26 "Parties"). The obligations of the parties are memorialized as an Order by the Executive Officer  
of the Los Angeles Regional Water Quality Control Board ("Executive Officer") as follows:

27 **1. INTRODUCTION**

28 On June 17, 2004, the Executive Officer of the Regional Board issued Administrative

1 Complaint No. R4-2004-0066 ("Complaint") against Shea Homes for certain alleged violations of  
2 the National Pollutant Discharge Elimination System ("NPDES") Permit for Storm Water  
3 Discharges Associated with Construction Activity ("General Permit"), as adopted by Water  
4 Quality Order 99-08-DWQ (CAS000002), regarding "The Colony" construction project located at  
5 4400 - 4700 Las Virgenes Road, Calabasas, California 91302 ("Site"). The Complaint alleged  
6 that Shea Homes violated: Section A.1 of the General Permit for failure to develop and  
7 implement a complete Storm Water Pollution Prevention Plan ("SWPPP") for the Site; Sections  
8 A.6, A.7 and A.8 of the General Permit for failure to implement, maintain and improve an  
9 effective combination of sediment and erosion control Best Management Practices ("BMPs") that  
10 resulted in a discharge of sediment to Las Virgenes Creek; and Section A.5 of the General Permit  
11 for failure to implement effective on-site storage and disposal methods of construction waste.  
12 The Complaint proposed to assess an administrative civil liability of \$34,000.00 against Shea  
13 Homes.

14 2. **SHEA HOMES LIMITED PARTNERSHIP**

15 Shea Homes was at all times referenced in the Complaint authorized to conduct business  
16 in California as a California limited partnership. Shea Homes disputed the violations alleged in  
17 the Complaint. The Parties have conferred for the purpose of settling this matter and the  
18 allegations described herein without a formal hearing.

19 2.1. The Parties, through their respective representatives, have reached this settlement  
20 for the violations alleged in the Complaint and additional alleged violations of the General Permit  
21 as described below. This settlement is subject to public comment and Regional Board approval  
22 as provided below.

23 NOW, THEREFORE, in exchange for their mutual promises and for other good and  
24 valuable consideration specified herein, the sufficiency of which are hereby acknowledged, the  
25 Parties agree as follows:

26 3. **WAIVER OF HEARING**

27 Shea Homes waives any right to an administrative and/or judicial hearing in this matter  
28 and further agrees that it will not contest or otherwise challenge this Agreement before the

1 Regional Board, the State Water Resources Control Board, or any court. The Prosecution Team  
2 likewise agrees that it will not contest or otherwise challenge this Agreement before the Regional  
3 Board, the State Water Resources Control Board, or any court, provided that the Executive  
4 Officer or the Regional Board does not exercise their authority to declare the Agreement to be  
5 null and void as the result of public comment, as specified below in paragraph 9.

6 4. **SCOPE OF SETTLEMENT**

7 4.1. In consideration of the monetary payments set forth in paragraph 6 below, the  
8 Prosecution Team and Shea Homes, as parties to this Agreement, have agreed to resolve the  
9 claims alleged in the Complaint and other related violations against Shea Homes by mutually  
10 consenting to this Agreement. This Agreement shall constitute full settlement of (i) the violations  
11 alleged in the Complaint against Shea Homes and identified in the Notice of Violations issued by  
12 the Executive Officer to Shea Homes on March 18, 2004 and November 10, 2004, and (ii) the  
13 additional violations identified on December 29, 2004, January 3, 7, 9 and 24, 2005, as  
14 documented by Regional Board staff. This Agreement shall not settle any other violations or  
15 restrict in any way the Regional Board from taking appropriate enforcement action concerning  
16 any violations not specifically identified in this paragraph. The provisions of this paragraph are  
17 also expressly conditioned on full and complete performance by Shea Homes of all of the terms  
18 and conditions of this Agreement.

19 4.2. Except as provided herein, nothing in this Agreement is intended nor shall it be  
20 construed to preclude any other State agency, department, board, or entity from taking  
21 appropriate enforcement actions or otherwise exercising its authority under any law, statute or  
22 regulation.

23 5. **NO ADMISSION OF LIABILITY**

24 By execution of this Settlement Agreement, Shea Homes does not admit any fact, finding,  
25 issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute  
26 or be construed as an admission by Shea Homes of any fact, finding, conclusion, issue of law, or  
27 violation of law. The existence of this Settlement Agreement will be a fact which may, consistent  
28 with the terms of this Settlement Agreement, be considered in any future enforcement action by

1 or on behalf of the Regional Board or subsequent permitting.

2 6. ADMINISTRATIVE CIVIL LIABILITY

3 If, and only if, this Agreement becomes effective, Shea Homes shall pay to the State  
4 Water Resources Control Board the total sum of \$89,880.00 pursuant to Water Code Section  
5 13385. Of this amount, the administrative civil liability complaint (ACLC) issued by the  
6 Regional Board in June 2004 proposed a payment in the amount of \$34,000. In addition, there  
7 were five (5) days of alleged violations documented by Regional Board staff since the issuance of  
8 the ACLC (December 29, 2004, January 3, 7, 9 and 24, 2005). Fines for those alleged violations,  
9 at \$10,000 per violation, total \$50,000. At least eighty-four (84) hours of Regional Board staff  
10 time were spent on matters pertaining to the violations since the issuance of the ACLC. The  
11 payments required since the issuance of the June 2004 ACLC are therefore \$55,880, thus bringing  
12 the total payment to \$89,880.00. Ten-thousand dollars (\$10,000.00) of the total amount due shall  
13 be designated as administrative cost reimbursement. Shea Homes shall pay the State Water  
14 Resources Control Board the sum of \$89,880.00 within ten (10) business days of receiving  
15 written notice from the Executive Officer that the Agreement has been approved by the Regional  
16 Board and is no longer subject to challenge pursuant to Water Code sections 13320 or 13330, or  
17 that all such challenges, if any, have been resolved. In complying with this requirement, Shea  
18 Homes' check shall identify the name and case number "R4-2004-0066" of this matter, be made  
19 payable to the "State Water Resources Control Board Cleanup and Abatement Account", and  
20 shall be delivered to:

21 State Water Resources Control Board  
22 Accounting Office  
23 1001 I Street  
24 Sacramento, California 95814

25 A photocopy of the check shall also be sent to:

26 Executive Officer  
27 Regional Water Quality Control Board  
28 Los Angeles Region  
320 West Fourth Street, Suite 200  
Los Angeles, California 90013

and

1 G. Lynn Thorpe, Deputy Attorney General  
2 Office of the Attorney General  
3 1300 I Street  
4 P. O. Box 944255  
5 Sacramento, CA 94244-2550

6 **7. COMPLIANCE WITH PAYMENT SCHEDULE**

7 If Shea Homes fails to meet the payment deadline set forth in paragraph 6, Shea Homes  
8 shall, after a grace period of an additional ten (10) business days, be obligated to pay the State  
9 Water Resources Control Board an additional amount of one hundred dollars (\$100.00) per day,  
10 for each day following the payment deadline during which Shea Homes has not paid the amount  
11 owed.

12 **8. GOVERNMENT LIABILITIES**

13 8.1. The State of California, including but not limited to the Regional Board and the  
14 State Water Resources Control Board, shall not be liable for injuries or damages to persons or  
15 property resulting from acts or omissions by Shea Homes, or related parties specified in  
16 paragraph 14, in carrying out activities pursuant to this Agreement, nor shall the State of  
17 California be held as a party to any contract entered into by Shea Homes or its agents in carrying  
18 out activities pursuant to this Agreement.

19 8.2. Shea Homes and its respective successors and assigns, agents, attorneys,  
20 employees, officers, and representatives hereby release and discharge the Regional Board, State  
21 Water Resources Control Board and the State of California, including each and every constituent  
22 agency, board, department, office, commission, fund or entity thereof, and successors and assigns,  
23 agents, attorneys, employees, offices, and representatives of the Regional Board, State Water  
24 Resources Control Board and the State of California, and each and every constituent of the State  
25 of California from any and all claims, demands, actions causes of action, obligations, damages,  
26 penalties, liabilities, debts, losses, interest, costs, or expense of whatever nature, character, or  
27 description, that they may have or claim to have against one another by reason of any matter or  
28 omission arising from any cause whatsoever relating to the Complaint and this Agreement.

8.3. Shea Homes' complete performance of its obligations under this Agreement shall  
effect a release and discharge of Shea Homes and its respective successors and assigns, agents,

1 attorneys, employees, offices, and representatives by the Regional Board from any and all claims,  
2 demands, actions, causes of action, obligation, damages, penalties, liabilities, debts, losses,  
3 interest, costs, or expenses of whatever nature, character, or description, that it may have or claim  
4 to have against Shea Homes by reason of any matter or omission arising from any cause  
5 whatsoever relating to the Complaint and as described in Section 4.1. Notwithstanding this  
6 paragraph, however, the Regional Board, State Water Resources Control Board and the State of  
7 California expressly reserve their rights under Civil Code section 1542.

8       9.     PUBLIC COMMENT

9       9.1.   Pursuant to a settlement agreement between the People of the State of California  
10 and Shea Homes, in the proceeding entitled *People v. Shea Homes*, Los Angeles Superior Court  
11 case no. 6MB00001, Shea Homes has implemented a corrective action work plan at Las Virgenes  
12 Creek and as further identified in the "Interoffice Technical Memorandum" issued by the  
13 California Department of Fish and Game, dated September 10, 2007. Accordingly, within seven  
14 (7) business days of the Executive Officer's receipt of this Settlement Agreement signed by Shea  
15 Homes, the Executive Officer shall publish the availability of the Agreement for the purpose of  
16 accepting public comments on the Agreement for a period of thirty (30) days. The Executive  
17 Officer receives significant new information that reasonably affects the propriety of entering into  
18 this Agreement, the Executive Officer may unilaterally declare this Agreement void.  
19 Furthermore, Shea Homes acknowledges that the Executive Officer retains the authority to submit  
20 this Agreement to the Regional Board for its consideration. Otherwise, seven (7) business days  
21 after the close of the public comment period the Executive Officer will provide written notice that  
22 the public comment period has closed, that all comments have been considered, and that the  
23 Executive Officer has determined that the Agreement is in the best interest of the people of the  
24 State of California. Respondent Shea Homes agrees that it may not rescind or otherwise withdraw  
25 its approval of the Agreement. The Agreement becomes effective immediately upon the  
26 Executive Officer's notice, or the Regional Board's approval, respectively. Written notice that  
27 the agreement has become effective shall be sent either via (i) first-class, registered, certified  
28 mail, return receipt requested or (ii) overnight courier to:

1 John Morrissey  
2 J.F. Shea Co., Inc.  
3 655 Brea Canyon Road  
4 Walnut, CA 91789

5 With a copy delivered to:

6 Brad D. Brian  
7 Munger, Tolles & Olson, LLP  
8 355 South Grand Avenue, 35th Floor  
9 Los Angeles, California 90071-1560

10 9.2. The Parties intend that the procedure that has been adopted for the approval of the  
11 settlement by the Parties and review by the public; as reflected in this Agreement, will be  
12 adequate. In the event procedural objections are raised prior to this settlement becoming  
13 effective, the Parties agree to meet and confer concerning any such objections, and may agree to  
14 revise or adjust the procedure as necessary or advisable under the circumstances.

15 9.3. In the event that this Agreement does not take effect, or is vacated in whole or in  
16 part by the Regional Board, State Water Resources Control Board or a court, the Parties  
17 acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional  
18 Board to determine whether to assess administrative civil liabilities for the underlying alleged  
19 violations, unless the Parties agree otherwise. The Parties agree that all oral and written  
20 statements and agreements made during the course of settlement discussions, except this  
21 Agreement, will not be admissible as evidence in the hearing. The Parties also agree to waive any  
22 and all objections related to their efforts to settle this matter, including, but not limited to,  
23 objections related to prejudice or bias of any of the Regional Board members or their advisors and  
24 other objections that are premised in whole or in part on the fact that the Regional Board  
25 members or their advisors were exposed to some of the material facts and/or the Parties'  
26 settlement position, and therefore may have formed impressions or conclusions, prior to  
27 conducting the contested evidentiary hearing.

28 9.4. Neither this Agreement nor any payment pursuant to the Agreement shall constitute  
evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or  
liability, nor shall it be construed as an admission of violation of any law, rule or regulation,

1 except as provided in paragraph 5. However, this Agreement and/or any actions or payment  
2 pursuant to the Agreement may constitute evidence in actions seeking compliance with this  
3 Agreement.

4 10. **COMPLIANCE WITH APPLICABLE LAWS**

5 Shea Homes shall carry out this Agreement in compliance with all local, State, and federal  
6 requirements.

7 11. **LIABILITY**

8 Nothing in this Agreement shall constitute or be construed as a satisfaction or release from  
9 liability for any conditions or claims arising as a result of past, current, or future operations or  
10 actions by Shea Homes, except as provided in this Agreement.

11 12. **ADDITIONAL ENFORCEMENT ACTIONS**

12 The Regional Board and State Water Resources Control Board reserve the right to take  
13 any further enforcement action concerning any violation of law not specifically alleged in the  
14 Complaint or otherwise included within the scope of this settlement pursuant to paragraph 4.

15 13. **ATTORNEYS' FEES AND COSTS**

16 Each party to this Agreement shall bear all attorneys' fees and costs arising from that  
17 party's own counsel in connection with the matters referred to herein.

18 14. **PARTIES BOUND**

19 This Agreement shall apply to and be binding upon Shea Homes and its respective  
20 partners, officers, directors, agents, receivers, trustees, employees, contractors, consultants,  
21 successors, and assignees, and the Regional Board and any successor that may have responsibility  
22 for and jurisdiction over the subject matter of this Agreement, except as provided in paragraphs 9  
23 through 9.3 and 18.

24 15. **ENTIRE AGREEMENT**

25 This Agreement comprises the entire agreement and understanding of the Parties with  
26 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
27 commitments and understandings related hereto. No representations, oral or otherwise, express or  
28 implied, other than those contained herein have been made by any party hereto. No other

1 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to  
2 bind any of the parties.

3 16. **AUTHORIZATION TO SETTLE**

4 Each person executing this Stipulation and Agreement in a representative capacity  
5 represents and warrants that he or she is fully authorized by the party he or she represents to enter  
6 into and execute this Agreement on behalf of the party represented and legally to bind that party,  
7 except as otherwise set forth herein.

8 17. **MODIFICATION**

9 This Agreement may be modified from time to time by express written agreement of the  
10 Parties and in accordance with law.

11 18. **APPROVAL BY THE REGIONAL BOARD**

12 If the Executive Officer submits this Agreement to the Regional Board for its approval, it  
13 shall be null and void, and be without any force or effect, unless it is approved by the Regional  
14 Board. If the Agreement is not so approved by the Regional Board, the execution of this  
15 Agreement by Shea Homes and the Prosecution Team shall not be construed as an admission by  
16 Shea Homes or the Prosecution Team of any fact, conclusion of law, issue of law, or violation of  
17 law.

18 19. **GOVERNING LAW**

19 The terms of this Agreement shall be governed by the laws of the State of California.  
20 This Agreement shall not be construed against the party preparing it, but shall be construed as if  
21 the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be  
22 interpreted against any one party.

23 20. **COUNTERPARTS AND FACSIMILE**

24 This Agreement may be executed in counterparts and facsimile, each of which shall be  
25 deemed an original, and all of which, when taken together, shall constitute one and the same  
26 document.

APPROVALS OF THE PARTIES

IT IS SO AGREED:

DATED: 4/20/09

FOR THE REGIONAL BOARD  
PROSECUTION TEAM

By: 

G. LYNN THORPE

Attorney for the Los Angeles Regional Water Board  
Prosecution Team

DATED: 4-20-09

FOR SHEA HOMES LIMITED PARTNERSHIP

By: 

PAUL E. MOSLEY

Vice President & Counsel, Shea Homes

IT IS SO ORDERED:

DATED: \_\_\_\_\_

FOR THE LOS ANGELES REGIONAL WATER  
QUALITY CONTROL BOARD

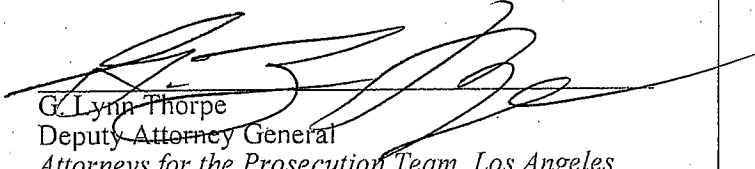
By: \_\_\_\_\_

EXECUTIVE OFFICER

1 APPROVED AS TO FORM:

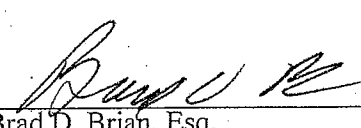
2 DATED: 4/20/09

EDMUND G. BROWN JR.  
Attorney General of California

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6 G. Lynn Thorpe  
Deputy Attorney General  
Attorneys for the Prosecution Team, Los Angeles  
Regional Water Quality Control Board  
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9

10 MUNGER, TOLLES & OLSON, LLP

11  
12 DATED: 4/20/09

13   
14 Brad D. Brian, Esq.  
Attorneys for Shea Homes Limited Partnership  
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CERTIFICATION

I, \_\_\_\_\_, hereby certify that notice of this Agreement has been provided to the public. The public has received no less than thirty (30) days to comment on this Agreement. I have considered all comments that have been received, and I have determined that this Agreement is in the best interest of the people of the State of California. This Agreement is hereby effective immediately.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Officer

**EDMUND G. BROWN JR.**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 322-9226  
Facsimile: (916) 327-2247

April 21, 2009

**VIA OVERNIGHT MAIL**

Paula Rasmussen, Asst. Deputy Director  
Regional Water Quality Control Board  
Los Angeles Region  
320 West Fourth Street, Suite 200  
Los Angeles, California 90013

Dear Ms. Rasmussen:

Enclosed for the Executive Officer's consideration is the original Settlement Agreement and Mutual Release ("Agreement") that has been approved and signed by respondent Shea Homes and its attorney.

Please note that within seven business days of receipt of this signed Agreement, paragraph 9.1 requires the Executive Officer to publish the availability of the Agreement for the purpose of accepting public comments during a thirty-day period. With seven business days after the close of the public comment period, the Executive Officer is then required to provide written notice to Shea Homes and its attorneys that the public comment period has closed, that all comments have been considered, and, if appropriate, that the Executive Officer has determined that the Agreement is in the best interest of the people of the State of California. Written notice should be sent either via (i) first-class, registered, certified mail, return receipt requested or (ii) overnight courier to:

John Morrissey  
J.F. Shea Co., Inc.  
655 Brea Canyon Road  
Walnut, CA 91789

With a copy delivered to:

Brad D. Brian  
Munger, Tolles & Olson, LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, California 90071-1560

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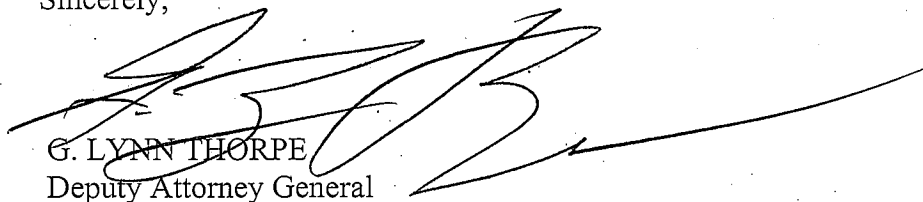
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Paula Rasmussen  
April 21, 2009  
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Please note that the Agreement becomes effective immediately upon the Executive Officer's notice. Within ten business days after receipt of this written notice, Shea Homes is then required to pay the Regional Board the total sum of \$89,880.00 pursuant to Water Code Section 13385.

Please contact me if you have any questions regarding this matter.

Sincerely,



G. LYNN THORPE  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

Enclosure

cc: Ed Ochoa, Deputy Attorney General  
San Diego

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